

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VECTREN COMMUNICATIONS SERVICES, No. C 08-3137 SI
Plaintiff,
v.
CITY OF ALAMEDA,
Defendant.

SPECIAL VERDICT

We the jury in the above captioned action, find as follows on the questions submitted to us:

Part 1: Vectren's Breach of Contract Claims against Alameda related to operation of the Telecom System:

A – Rates

A-1: Did Vectren prove, by a preponderance of the evidence, all of the elements necessary to establish that Alameda breached the 2004 Installment Sale Agreement with respect to the rates it charged to customers?

Yes _____ No _____.

If you answered "Yes" to Question A-1, please answer the next question.
Otherwise, please go to Question B-1.

A-2: Did Alameda prove, by a preponderance of the evidence, that Vectren knew, or by the exercise of reasonable care should have known, before August 29, 2006, of all of the elements of this claim for breach?

Yes _____ No _____.

If you answered "No" to Question A-2, please answer the next question.
Otherwise, please go to Question B-1.

A-3: Did Vectren prove, by a preponderance of the evidence, that it was harmed as a result of this breach?

Yes _____ No _____.

Please answer the next question.

B - Staffing

B-1: Did Vectren prove, by a preponderance of the evidence, all of the elements necessary to establish that Alameda breached the 2004 Installment Sale Agreement with respect to the staffing of its operation of the Telecom System?

Yes _____ No _____.

If you answered "Yes" to Question B-1, please answer the next question.
Otherwise, please go to Question C-1.

B-2: Did Alameda prove, by a preponderance of the evidence, that Vectren knew, or by the exercise of reasonable care should have known, before August 29, 2006, of all of the

elements of this claim for breach?

Yes _____ No _____.

If you answered “No” to Question B-2, please answer the next question.
Otherwise, please go to Question C-1.

B-3: Did Vectren prove, by a preponderance of the evidence, that it was harmed as a result
of this breach?

Yes _____ No _____.

Please answer the next question.

C - Voice/Telephone

C-1: Did Vectren prove, by a preponderance of the evidence, all of the elements necessary to
establish that Alameda breached the 2004 Installment Sale Agreement with respect to
the addition of, or failure to add, voice or telephone service to the Telecom System ?

Yes _____ No _____.

If you answered “Yes” to Question C-1, please answer the next question.
Otherwise, please go to Question D-1.

C-2: Did Alameda prove, by a preponderance of the evidence, that Vectren knew, or by the
exercise of reasonable care should have known, before August 29, 2006, of all of the
elements of this claim for breach?

Yes _____ No _____.

If you answered “No” to Question C-2, please answer the next question.
Otherwise, please go to Question D-1.

C-3: Did Vectren prove, by a preponderance of the evidence, that it was harmed as a result
of this breach?

Yes _____ No _____.

D - Damages

D-1: If you answered “Yes” to any of the questions A-3, B-3 and/or C-3, please state the
amount of damages caused to Vectren by the breach or breaches you found:

\$_____

Part 2: Vectren's Breach of Contract Claims against Alameda related to allegedly improper accounting:

A: Did Vectren prove, by a preponderance of the evidence, all of the elements necessary to establish that Alameda breached the 2004 Installment Sale Agreement by improperly accounting for the Net Series 2002A Revenues?

Yes _____ No _____.

If you answered "Yes" to Question A, please answer the next question.
Otherwise, please go to Part 3.

B: Did Alameda prove, by a preponderance of the evidence, that Vectren knew, or by the exercise of reasonable care should have known, before August 29, 2006, of all of the elements of this claim for breach?

Yes _____ No _____.

If you answered "No" to Question B, please answer the next question.
Otherwise, please go to Part 3.

C: Did Vectren prove, by a preponderance of the evidence, that it was harmed as a result of this breach?

Yes _____ No _____.

D: If you answered "Yes" to question C, please state the amount of damages caused to Vectren by this breach:

\$ _____

Part 3: Vectren's Breach of Contract Claims against Alameda related to allegedly improper sale of the Telecom System:

A: Did Vectren prove, by a preponderance of the evidence, all of the elements necessary to establish that Alameda breached the 2004 Installment Sale Agreement by improperly selling the Telecom System?

Yes _____ No _____.

If you answered "Yes" to Question A, please answer the next question.
Otherwise, please go to Part 4.

B: Did Alameda prove, by a preponderance of the evidence, that Vectren knew, or by the exercise of reasonable care should have known, before August 29, 2006, of all of the elements of this claim for breach?

Yes _____ No _____.

If you answered "No" to Question B, please answer the next question.
Otherwise, please go to Part 4.

C: Did Vectren prove, by a preponderance of the evidence, that it was harmed as a result of this breach?

Yes _____ No _____.

D: If you answered "Yes" to question C, please state the amount of damages caused to Vectren by this breach:

\$ _____

[Note: Please state all damages you find based on this breach. If you have also found damages related to earlier breaches, do not be concerned about duplication of damages; the Court will assess the final damage figures after the verdict is returned.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Part 4: Alameda's affirmative defense of waiver:

Did Alameda prove, by clear and convincing evidence, all of the elements necessary to establish that Vectren gave up or waived its right to have Alameda perform the following obligations under the 2004 Installment Sale Agreement?

| | | |
|--|-----------|----------|
| Waiver of obligations re: rate covenant? | Yes _____ | No _____ |
| Waiver of obligations re: staffing provisions? | Yes _____ | No _____ |
| Waiver of obligations re: voice/telephone? | Yes _____ | No _____ |
| Waiver of obligations re: sale of Telecom System? | Yes _____ | No _____ |

Dated: _____

FOREPERSON